Cases 577; *Hokks v. R. R.*, L. R. 10 Q. B. 122. Such is the rule to-day in all actions ex contractu and ex delicto, with modifications. *Mentzer v. W. U. Tel. Co.*, 93 Iowa 752. Considering that sufferings of mind and body usually act reciprocally on each other, damages are allowed for mental suffering consequent upon physical injury. *Seger v. Town of Barkhamstead*, 22 Conn. 290. Still it must result directly from the injury or be the natural and proximate consequence of it. *Sullivan v. Ry.*, 197 Mass. 152; *Chicago City Ry. v. Anderson*, 182 Ill. 298. The courts, however, are divided in deciding what mental suffering is to be considered proximate, the difficulty seeming to arise as to the causal connection between the injury and the resultant damages. It has been held that mortification due to one's appearance as a result of the injury is sufficiently allied to allow recovery. *Gray v. Wash. Water Power Co.*, 36 Wash. 665; but *contra, Linn v. Luquesne*, 204 Pa. St. 511; *So. P. Co. v. Hetzu*, 135 Fed. 274. However, the courts seem to be unanimous in disallowing recovery where the anguish arises from worry concerning matters apart from the injury, which, although they may affect him, are caused by some conception arising from a different cause. *Chicago v. McLean*, — Ill. —; *Keyes v. Ry.*, 30 Minn. 290; *Atchison Ry. Co. v. Chaner*, 57 Kansas 41. The principal case seems to follow the authorities, which draw an artificial line where facts similar to its facts exist. In drawing this line the courts consider the mental anguish as too remote, although primarily caused by the defendant's acts.

J. McD.

DEATH—CONTRIBUTORY NEGLIGENCE OF PARENT.—DABRINSKY V. PENN. CO., 94 ATL. (PA.) 269.—*Held*, contributory negligence of one parent will bar recovery by the other parent for the death of their minor child, the negligence of the parent in charge of the child being imputed to the parent who seeks to recover.

The administrator of the estate of a deceased child may recover damages for its wrongful death though the parents or other persons having charge of the child were guilty of contributory negligence. *City of Birmingham v. Crane*, 56 So. (Ala.) 723. And this is so though the parent may be the sole distributee of the child's estate, *Nashville Co. v. Busbee*, 139 S. W. (Ark.) 301, and may be himself acting as administrator. *McKay v. Syracuse Ry. Co.*, 208 N. Y. 359; *Southern R. R. v. Shipp*, 53 So. (Ala.) 150. But on the other hand Illinois holds that in a suit by the administrator for the death of a child the right of the administrator to recover is barred by the contributory negligence of the child's parents. *Ohnesorge v. C. C. R. R.*, 259 Ill. 424; *Thomas v. Anthony*, 179 Ill. App. 463. In such a case if the parent is the real beneficiary, his contributory negligence will be imputed to the child, though the action is by the administrator. *Feldman v. Detroit Ry.*, 162 Mich. 486. As to the exact point of the principal case there is a square conflict of authority. For contrary holdings see: *Donk C. & C. Co. v. Leavitt*, 109 Ill. App. 385; *Phillips v. Denver Grain Co.*, 53 Colo. 458 (wife suing as co-plaintiff); *Potts v. Union Traction Co.*, 83 S. E. (W. Va.) 918; *Love v. D. J. & C. R. R.*, 135 N. W. (Mich.) 963. See also, *Vinnette v. N. P. R. R.*, 91 Pac. (Wash.) 975; *Kuchler v.*

Milwaukee R. & L. Co., 146 N. W. (Wis.) 1133. The principal case seems out of harmony with the weight of authority.

S. B.

EMINENT DOMAIN—VACATION OF ALLEY—COMPENSATION AS A CONDITION PRECEDENT—TAKING OF PRIVATE PROPERTY.—HUBBELL ET AL. V. CITY OF DES MOINES, 153 N. W. (IA.) 337.—*Held*, that where a coliseum, used for assembly purposes, abutted on an alley on which it had no exits, these being located on other streets, and the city vacated such alley, by an ordinance devoting the land to park purposes, payment by the city to the owner of the building of compensation for damages sustained by him by vacation of the alley was not a condition precedent to vacation, since such vacation of a street is not a "taking of private property" in contemplation of the constitution.

The general rule deducible from the authorities seems to be that any destruction, restriction, or interruption of the common necessary use and enjoyment of property constitutes a taking. *Hooker v. New Haven, etc., R. Co.*, 14 Conn. 146; *Brinton v. Comm.*, 178 Mass. 199. The benefits to be received by the person whose land is taken by the public for a road is a part of the consideration for release of the land, or its condemnation for a road. *Cochrane v. Comm.*, 175 Mass. 199. And when once vested in him, or he becomes entitled thereto, they become appurtenant to the land, and are as much his property as the land itself; and neither state nor person can deprive him of it except in the manner prescribed by the constitution. *Pearsall v. Eaton Co.*, 74 Mich. 558; *Gorgan, etc., v. Louisville & New Albany, etc., R. R.*, 89 Ky. 216; *Webster v. Lowell*, 142 Mass. 324; *contra, McGee's Appeal*, 11 Pa. St. 470; *Levee District No. 9 v. Farmer*, 101 Cal. 178; principal case.

C. Y. B.

EQUITABLE CONVERSION—DISPUTED LEGACY—SPECULATIVE PURCHASE BY EXECUTOR.—COYNE V. DAVIS, 154 N. W. (NEB.) 547.—*Held*, that land devised in trust, to be sold to satisfy certain legacies, is personalty in equity, to the exclusion of the heir-at-law, even after the executrix has purchased for a nominal sum the valid, but then doubtful, claim of a legatee thereto. Morrissy, C. J., and Sedgwick and Fawcett, JJ., *dissenting*.

The doctrine of equitable conversion applies only to effectuate the testamentary intention. *In re Rudy*, 185 Pa. St. 359. If the trustee to sell acquires but the bequest fails, the trust results to the heir-at-law. *Matter of Wagner*, 74 Hun. (N. Y.) 352. Similar in effect is the discharge or release of a legatee's claim, as this enures to the benefit of the estate. See *Hale v. Aaron*, 77 N. C. 371. When an executor buys in the claim of a creditor, this is presumed to be a payment and not a purchase. *Gillett v. Gillett*, 9 Wis. 194. In case of a legacy purchased by the executor in his individual capacity, it is held that only the vendor can attack the executor's interest. *Peyton v. Enor*, 16 La. Ab. 135; *Hale v. Aaron, supra*; *Barton v. Hassard*, 3 Drury & Warren's C. L. Cases 461. This doctrine, if sound, extends